

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (Agreement) is entered into by and between the State of Michigan acting through the Michigan Attorney General's Office and on behalf of the Michigan Department of Community Health (collectively the "State"); JARC, a Michigan non-profit corporation (the "Defendant"); and Katherine Adams (the "Relator") (hereafter collectively referred to as "the Parties"), through their authorized representatives.

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A Defendant is a Farmington Hills, MI, based non-profit, non-sectarian agency dedicated to enabling people with disabilities to live full, dignified lives, in the community, and to providing support and advocacy for their families.

B. Relator is a resident of Michigan. On February 27, 2007, Relator filed a *qui tam* action in the Ingham County Circuit Court captioned *State of Michigan ex rel Katherine P Adams v JARC, a Michigan non-profit corporation*, docket number 07-000256-CZ (hereinafter "the Civil Action").

C Relator contended that Defendant submitted or caused to be submitted claims for payment to the Medicaid Program, Title XIX of the Social Security Act, 42 U.S.C §§ 1396-1396v which violated the Michigan statutes, MCL 400.601 et seq, as alleged in the first amended complaint (the "Complaint") filed in the Civil Action, specifically, soliciting and receiving payments from Medicaid recipients, their families,

representatives, or heirs for services paid for by Medicaid (hereinafter the "Covered Conduct"). The State declined to intervene in the Civil Action

D. Relator contended that the State has certain civil claims for damages, penalties, costs and attorney fees against Defendant under the Michigan statutes, MCL 400.601 et seq., arising out of the "Covered Conduct," as described herein. Defendant maintains that the Civil Action involves a dispute over the interpretation of a narrow provision of said statute.

E. Defendant denies that it committed any wrongful act, or that it is liable to the State, any other governmental agency or body, Relator, or any other person or entity. However, because of the cost and uncertainty of litigation and to preserve funds for the people Defendant serves, Defendant has elected to settle the Civil Action. The parties agree that this Agreement shall constitute neither an admission of liability by Defendant nor a concession by the State or Relator that their claims are not well founded, and that this Agreement may not be used to suggest otherwise.

F. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the claims in the Civil Action, the Parties have reached a full and final settlement and mutual release, pursuant to the Terms and Conditions below.

III. TERMS AND CONDITIONS

1. The Parties agree that Defendant has taken affirmative steps to investigate and address the Covered Conduct. Defendant denies that it has committed any wrongful act and hereby agrees it will not solicit or receive funds from Medicaid beneficiaries, their families, representatives, or heirs for services covered by Medicaid.

2. Defendant agrees to pay the State of Michigan \$400,000 (the "Settlement Amount"). The State and Relator agree that Relator's share of the Settlement Amount shall be \$100,000. The Settlement Amount shall be paid as follows:

a. Defendant agrees to pay the State's share of the Settlement Amount directly to the State as follows:

1. \$300,000 to the State of Michigan, payable \$50,000 on July 1, 2009 and \$50,000 on each succeeding July 1st through 2014, or subject to such other payment terms as may be agreed to between the State and Defendant in the future. Payments shall be mailed to the Department of Attorney General, P.O. Box 30218, Lansing, Michigan, 48909.

b. Defendant agrees to pay the Relator's share of the Settlement Amount directly to the Relator as follows:

\$100,000 to Relator, payable \$50,000 on or before December 1, 2008 (receipt of which is hereby acknowledged), and \$50,000 on or before April 10, 2009.

c. The Parties agree that the State is in no way responsible to pay Relator any portion of the Settlement Amount, and that the Relator's share of the Settlement Amount is to be paid directly to Relator by Defendant.

d. In accordance with MCL 400.610(a)(9), Defendant shall pay to Relator's counsel, Mark Hafeli and Patricia Dudek, attorneys' fees, costs, and expenses incurred in connection with the Civil Action in the amount of \$100,000. The attorneys' fees are payable to the attorneys as follows: \$50,000 on or before December 1, 2008.

(receipt of which is hereby acknowledged), and \$50,000 on or before April 10, 2009.

This payment of the statutory attorneys' fees, costs, and expenses is in addition to, and not included within, the Settlement Amount payment that Defendant is making to the State and Relator pursuant to this Agreement.

3. Subject to the exceptions in Paragraph 4 below, in consideration of the obligations of JARC in this Agreement, conditioned upon JARC's timely payment of the Settlement Amount, the State of Michigan, on behalf of itself, its officers, agents, agencies, and departments, agrees to release JARC, its parents, divisions, subsidiaries, predecessors, successors, assignees, transferees and affiliates from any further civil or administrative monetary claims the State of Michigan has for the Covered Conduct.

4. Notwithstanding any term of this Agreement, the State of Michigan specifically does not release any person or entity from any of the following claims or liabilities:

- a. any civil, criminal, or administrative liability arising under State of Michigan revenue codes;
- b. any criminal liability;
- c. any civil or administrative liability that JARC has or may have under any state statute, regulation or rule not covered by this Agreement;
- d. any liability to the State of Michigan (or its agencies) for any conduct other than the Covered Conduct;
- e. any liability based upon such obligations as are created by this Agreement, including payment in full of the settlement amounts set forth herein;
- f. except as explicitly stated in this Agreement, including but not limited to the first three clauses of Paragraph 5 below, any administrative liability, including mandatory exclusion from the State of Michigan's Medicaid Program;
- g. any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. any claims for personal injury or property damage or for other consequential damages arising from the Covered Conduct;

- i. any liability for failure to deliver goods or services due;
- j. any liability of individuals, including officers and employees.

5. In consideration of the obligations of JARC in this Agreement and conditioned on JARC's full payment of the Settlement Amount, the State of Michigan agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from the State of Michigan's Medicaid Program (except as reserved in Paragraph 4) for the Covered Conduct. Nothing in this Agreement precludes the State of Michigan from taking action against JARC in the event that JARC is excluded by the federal government, or for conduct and practices other than the Covered Conduct. The State of Michigan does not release JARC from any claims or actions that may be asserted by private payers or insurers.

6. JARC waives and shall not assert any defenses JARC may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. JARC is specifically not waiving any other defenses it may have to the claims or liabilities outlined in Section III, paragraph 4. Nothing in this Paragraph or any other provision of this Agreement constitutes an agreement by the State of Michigan concerning the characterization of the Settlement Amount for purposes of state revenue laws.

7. The Settlement Amount shall not be decreased as a result of the denial of claims for any payment now being withheld from payment by the State of Michigan's Medicaid Program or county payer for the Covered Conduct.

8. In consideration of the obligations of Defendant, and the Parties' agreements set forth in this Agreement, Relator and her heirs, successors, attorneys, agents, and assigns agree not to object to this Agreement and agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, and is in full settlement of any claims that Relator may have against the State relating to the Civil Action or Covered Conduct. Relator, for herself individually, and for her heirs, successors, agents, and assigns, fully and finally releases, waives, and forever discharges the State, its officers, agents, and employees, from any and all claims, known or unknown, however denominated, including but not limited to those arising from or relating to MCL 400.610a(5)(b); the Civil Action; the Covered Conduct, or any other conduct, from or relating to any share of the Settlement Amount other than expressly provided herein, and from or relating to any claims Relator may have under this Agreement. This agreement does not resolve or in any manner affect any claims the State may have under the state revenue code.

9 In consideration of the obligations of the Defendant, and the Parties' agreements set forth in this Agreement, Relator, for herself and for her heirs, successors, partners, employees, attorneys, agents, consultants and assigns, agrees not to object to this Agreement, and agrees that this Agreement is fair, adequate, and reasonable under the circumstances, and is in full settlement of all claims against the Defendant and all claims described herein. Relator, for herself individually, and for her heirs, successors, agents and assigns, fully and finally releases, waives, and forever discharges Defendant and its directors, officers, agents, attorneys, and employees from any and all claims, however denominated, which the Relator, her heirs, successors, partners, agents,

employees and attorneys, have or may have for damages, penalties, fines, awards, recoveries, attorney fees, expenses, costs, or other legal or equitable relief against Defendant.

10 In consideration of the Parties' agreements set forth in this Agreement, Defendant fully and finally releases the State, its agencies, employees, servants, and agents from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Defendant has asserted, could have asserted, or may assert in the future against the State, its agencies, employees, servants, and agents, related to the Civil Action, the Covered Conduct and the State's investigation and prosecution thereof

11 In consideration of the Parties' agreements set forth in this Agreement, Defendant fully and finally releases the Relator, her heirs, successors, partners, employees, agents, attorneys, consultants, and/or assigns from any claims (including attorneys' fees, costs, and expenses) of every kind and however denominated that Defendant, or any of them asserted, could have asserted, or may assert in the future against the Relator, her heirs, successors, partners, employees, agents, attorneys, consultants, and/or assigns related to the Civil Action, the Covered Conduct or the State's or Relator's investigation of the Civil Action or the Covered Conduct.

12 Except as expressly provided to the contrary in this Agreement, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

13 Defendant represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

14. Relator represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

15. This Agreement is governed by the laws of the State of Michigan. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the parties under this Agreement shall be the Circuit Court for the County of Ingham, Michigan.

16. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except as specifically provided herein.

17. JARC warrants that it has reviewed its financial situation and that it currently is solvent and shall remain solvent following payment of the Settlement Amount.

18. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

19. Upon execution of this agreement by the Parties, the Relator and the Defendant will sign a stipulation to dismiss the appeals by Defendant currently pending in the Michigan Court of Appeals.

20. The State of Michigan shall file a Notice of Intervention and the State of Michigan and Relator shall promptly sign and file a Joint Stipulation of Dismissal with prejudice in the Civil Action.

21. The individuals signing this Agreement on behalf of the Defendant represent and warrant that they are authorized by the Defendant to execute this Agreement. The individual(s) signing this Agreement on behalf of the Relator represent

and warrant that they are authorized by the Relator to execute this Agreement. The State signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

22. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

23. This Agreement is binding on Defendant's successors, transferees and assigns

24. This Agreement is binding on Relator's successors, transferees, heirs, and assigns

25. The "Effective Date" of this Agreement shall be the date of signature of the last signatory to the Agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

26. The Parties acknowledge that this Agreement was prepared by counsel for each of the Parties and shall not be interpreted against any Party as the drafter.

27. This Agreement incorporates by reference herein the provisions of the Settlement Agreement (Conditional) executed by the Parties on October 29, 2008. Following the execution of this Agreement, if an inconsistency is identified between this Agreement and the Settlement Agreement (Conditional) executed by the Parties on October 29, 2008, this Agreement will be deemed to be controlling

28. JARC will work with an Advocacy Consultant such as Robert Stein, Esq., to assure that fund raising policies pertaining to consumers of JARC services are consistent with Michigan and Federal laws.

[Signatures on the following pages]

STATE OF MICHIGAN

DATED: April 21, 2009

BY: James Brandell w/consent
James R. Brandell
Director
Bureau of Financial Management
and Administrative Services
Michigan Medicaid Program
Michigan Department of Community
Health
201 Townsend Street
Lansing, MI 48913

DATED: April 21, 2009

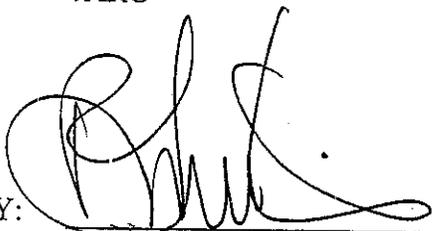
BY: Elizabeth Valentine
ELIZABETH VALENTINE
Assistant Attorney General
P.O. Box 30218
Lansing, MI 48909
(517) 241-6552

JARC

DATED: 4-8-09

BY: 
~~ROBERT NUSSBAUM~~
President
JARC

DATED: 4/8/09

BY: 
RICHARD LOEWENSTEIN
Chief Executive Officer
JARC

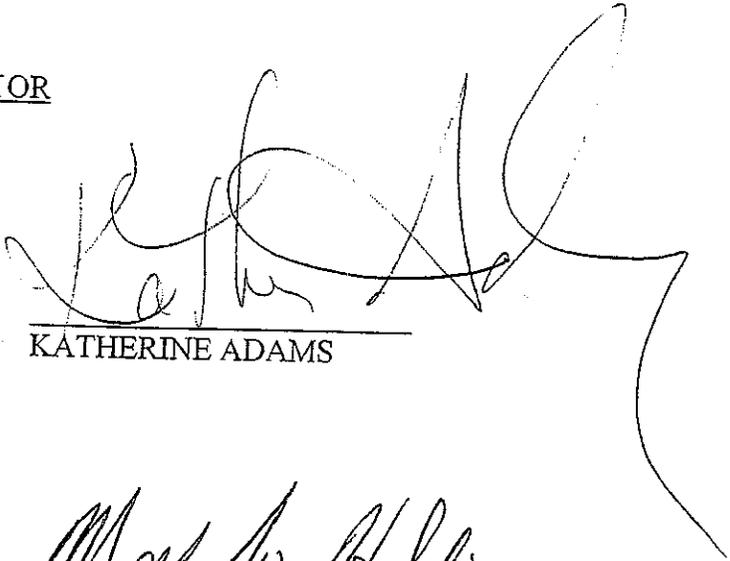
DATED: 4/8/09

BY: 
JOHN PAUL HESSBURG
Counsel for JARC
Kitch Law Firm
1 Woodward Ave, Suite 2400
Detroit, MI 48226
(313) 965-669

THE RELATOR

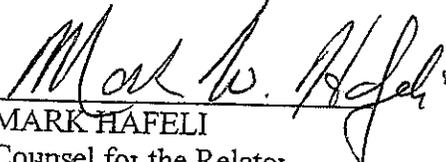
DATED: 3/27/09

BY:


KATHERINE ADAMS

DATED: 3/27/09

BY:


MARK HAFELI
Counsel for the Relator
Hafeli, Staran, Hallahan, Christ &
Dudek, PC
4190 Telegraph Rd, Suite 3000
Bloomfield Hills, MI 48302
(248) 731-3080

DATED: 3/27/09

BY:


PATRICIA DUDEK
Counsel for the Relator
Hafeli, Staran, Hallahan, Christ &
Dudek, PC
4190 Telegraph Rd, Suite 3000
Bloomfield Hills, MI 48302
(248) 731-3080